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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

09 CR 1120 (PKC)

5 HAN CAVAN,

6 Defendant.

7 -----x

8 New York, N.Y.
9 February 28, 2017
11:00 a.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 JOON H. KIM
16 United States Attorney for the
17 Southern District of New York
EDWARD IMPERATORE
Assistant United States Attorney

18 ARNOLD J. LEVINE
19 Attorney for Defendant
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(Case called)

MR. IMPERATORE: Good morning, your Honor. Edward Imperatore for the government.

THE COURT: Good morning, Mr. Imperatore.

MR. LEVINE: Good afternoon, your Honor. Arnold Levine for Mr. Cavan.

THE COURT: Good morning, Mr. Levine.

Mr. Levine, the first thing I want to go through is the materials I have, and the question will be whether I have everything I should have. I have a presentence report, recommendation and addendum revised by probation on December 19, 2016; I have your letter dated February 15, 2017; and I have the government's memorandum, which I received on February 17. I'm looking to see; yes, it bears the date of February 17.

Do I have everything I should have on the subject of sentencing?

MR. IMPERATORE: Yes.

MR. LEVINE: I believe so.

THE COURT: Mr. Levine, has the defendant read, reviewed and discussed with you the presentence report, recommendation and addendum?

MR. LEVINE: Yes.

THE COURT: Does the defendant have any objections to the facts set forth in the presentence report?

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1 MR. LEVINE: No, your Honor.

2 THE COURT: Does the defendant have any objections to
3 the guideline calculation set forth in the presentence report?

4 MR. LEVINE: No, your Honor.

5 THE COURT: Does the government have any objections to
6 the facts set forth in the presentence report?

7 MR. IMPERATORE: It does not.

8 THE COURT: Any objection to the guideline
9 calculation?

10 MR. IMPERATORE: No, your Honor.

11 THE COURT: I find and adopt as my findings of fact
12 the facts as set forth in the presentence report. Further,
13 I find that the guidelines were correctly calculated, and the
14 defendant is at total offense category 32, criminal history
15 category III.

16 I will now give Mr. Levine the opportunity to speak on
17 behalf of the defendant.

18 MR. LEVINE: Your Honor, as you know, I submitted the
19 sentencing memorandum. I don't want to go through all of that
20 again. However, having received the government's sentencing
21 memorandum, there were a few things I wanted to say about that.

22 THE COURT: Please.

23 MR. LEVINE: First, the government claims in the
24 sentencing memo at page eight that Mr. Cavan was "at least on
25 parole after serving only a few months of a 117-month

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1 sentence." That's just false.

2 Mr. Cavan was detained in custody of BOP on his
3 Minnesota case starting on March 2, 2006. He was transferred
4 to Canada in June of 2008. He served all that time in BOP
5 custody. And then once he was in Canada, about six weeks
6 following his transfer to Canada in June 2008, six weeks after
7 that, that is when he was released on accelerated day parole.
8 Only day parole, not full parole. He still had to reside
9 someplace because of their restrictions. He actually served
10 two and a half years in custody on the Minnesota case before
11 being paroled by Canada, not a few months.

12 THE COURT: The period of the sentence was 117 months,
13 was it?

14 MR. LEVINE: Yes.

15 THE COURT: He served about 24 and a half months of
16 the 117 months?

17 MR. LEVINE: Before the accelerated day parole. Then
18 after the violation of parole, the time he served on that,
19 about another six years or so once he was picked up for the
20 violation of parole that resulted directly from this
21 indictment. That was credited against that sentence.

22 THE COURT: Against the 117-month sentence?

23 MR. LEVINE: Right. So he ended up serving just about
24 all the time he would have served even if had been taken into
25 account the good time he would have gotten if he were here.

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1 On that note, I would also point out, Judge, the
2 United States Federal Sentencing Guidelines, the United States
3 Sentencing on drug cases is somewhat draconian. It has been
4 acknowledged through by politicians and by almost everybody
5 else for years now. In fact, the United States Sentencing
6 Guidelines for drug cases, unlike the drug cases for almost
7 all of other crimes in the guidelines, were not based on the
8 empirical studies and research of past sentences. The Supreme
9 Court acknowledged that in Kimbrough and Rita and other cases,
10 and therefore the sentences that are given out under the
11 guidelines in here were not entitled, or are not entitled to,
12 I think, as greater weight. Certainly there is a lot more
13 freedom or reason to depart from the guidelines -- I don't want
14 to use depart in terms of depart --

15 THE COURT: Vary.

16 MR. LEVINE: -- vary from the guidelines, yes, your
17 Honor -- on drug cases because of how the guidelines came about
18 in the first place for those charges.

19 I think that the 117 months on that in the first place
20 may have been somewhat extreme. Most of the world, most of the
21 civilized world doesn't sentence nonviolent drug offenders to
22 sentences like that than what they get here. I wouldn't
23 necessarily say serving two and a half years in prison is
24 necessarily a windfall, nevertheless, he ended up serving
25 another six or seven after that, so he did end up serving about

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1 nine years or so on that, and now he's been in, also.

2 Also on page eight of the government's sentencing
3 memoranda, the government claimed that Mr. Cavan worked in
4 earnest and continued to distribute narcotics in the United
5 States. I have seen no evidence from what I have received that
6 any of these drugs were going to be distributed in the United
7 States. All of the people involved in this conspiracy were
8 from Canada, negotiated from Canada, came into the United
9 States to pick up, with money, to get drugs to bring them back
10 to Canada. I haven't seen anything. I have not received any
11 discovery of any sort that said that anything was going to be
12 distributed in the United States. As far as I know, everything
13 was bound for Canada. In fact, the deal at all the meetings,
14 when there was going to be a meeting for the exchange of money
15 for drugs, was right over the Canadian border in Tonawanda, in
16 Buffalo, to be taken back to Canada.

17 On page nine, the government again talks about the
18 parole violation being "a separate offense." I think they
19 continue to labor under the misunderstanding of what the parole
20 system is, and perhaps it is because the federal system doesn't
21 have a parole system anymore. But the parole system in Canada,
22 just like it is in New York State, is that it is not a separate
23 offense. It is not an offense at all. You are on a parole,
24 you have a violation, you violate the parole, you go back in on
25 the original sentence. Itself is not a new crime. You don't

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1 get charged in state court, criminal court, Canadian court, for
2 a violation of parole. That is not something that must be
3 proved beyond a reasonable doubt. It is not a separate
4 offense. It does not have its own sentencing guidelines or
5 sentencing parameters by statute. You go back in for a
6 violation of the parole. It was not a separate offense.

7 Also, I think that the way the government phrases it,
8 in referring to it as a separate offense and making it sound
9 like he wasn't serving time there based on this conduct, flies
10 in the face of the plea agreement. Where on page three it says
11 the government agrees that the defendant's incarceration in
12 Canada for parole violation prior to his extradition to the
13 United States, based on the conduct charged in the indictment,
14 is a relevant consideration pursuant to Title 18, United States
15 Code, Section 3553(a). There is no question that conduct to
16 which he is charged here is what resulted in his
17 re-incarceration in Canada. He was out. He was at liberty in
18 Canada.

19 THE COURT: Now you lost me. I was with you until
20 that moment. Let's back it up and let me tell you what my
21 understanding is, and then you can tell me where I've gotten it
22 wrong.

23 A United States District Court sentenced the defendant
24 on November 20, 2006, to 117 months' imprisonment and three
25 years' supervised release. He was transferred to Canada in

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1 June of '08. He got day parole about six weeks later and full
2 parole on October 2, 2009. While he was on parole from the
3 original conviction from the District of Minnesota, he engaged
4 in the offense conduct, at least part of the offense conduct,
5 charged here. This resulted in his indictment in this case for
6 which he is going to be sentenced today. It also happened that
7 it had a different consequence, and that consequence was the
8 Canadian authorities revoked his parole and he continued to
9 serve his 117-month sentence. As you pointed out and I
10 understood, he wound up serving nearly all of that 117 months
11 because of the revocation of the parole. That's what I
12 understand the facts to be.

13 MR. LEVINE: Those are the facts, Judge.

14 THE COURT: I thought I understood you to be
15 suggesting that he was being punished by Canadian authorities
16 for the same offense conduct here that he is being sentenced
17 for today.

18 MR. LEVINE: Well, Judge, he really was because --

19 THE COURT: Then that's an entirely different
20 argument. Now you've gone in a different direction,
21 Mr. Levine. That is where I lose you.

22 MR. LEVINE: I don't think I have, Judge. Let me
23 explain.

24 THE COURT: If he was never indicted in this case, the
25 Canadian authorities could have elected to revoke his parole

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1 based on the offense conduct here, right?

2 MR. LEVINE: They could have. They didn't. It was
3 only after the United States notified them of the indictment in
4 the Southern District that they revoked his parole.

5 THE COURT: Right.

6 MR. LEVINE: The only basis for the revocation of
7 parole was this indictment and the conduct that gave rise to
8 it.

9 THE COURT: That is no different, in my mind, unless
10 you can tell me otherwise why if someone is serving a sentence,
11 say a 117-month sentence, and they violate the terms of their
12 supervised release, the court can remand them for their
13 violation of the terms of their supervised release.

14 It may have been the same act, it might have been a
15 murder in the course of a drug conspiracy, a single pull of a
16 trigger that caused the violation of supervised release, but
17 that has nothing whatsoever to do with the charging of a
18 separate crime for that murder in the course of the drug
19 conspiracy for which the defendant is answerable. That's a
20 separate punishment.

21 MR. LEVINE: Judge, I am not making a double jeopardy
22 argument.

23 THE COURT: I know you're not making a double jeopardy
24 argument, because I know you, Mr. Levine. If you were making a
25 double jeopardy argument, I would hear it and I would read it.

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1 I have no doubt about that.

2 MR. LEVINE: Right.

3 THE COURT: What I hear you trying to say is that, my
4 goodness, your Honor, the Canadians punished him for this. And
5 that argument has about as much weight as saying to the judge
6 in two cases in this court, nevermind international, that a
7 violation of supervised release punished the defendant for the
8 underlying crime or the punishment he received for the
9 underlying crime takes care of the violation of supervised
10 release. Because, after all, it was one bullet fired from one
11 gun on one day at one person, and therefore the punishment for
12 the murder in the course of drug trafficking takes care of the
13 violation of supervised release. It doesn't. Those are two
14 separate matters.

15 MR. LEVINE: Well, Judge, I think that the law does
16 allow you to consider it and take into account in terms of the
17 sentencing on either of them.

18 THE COURT: 3553(a) gives me a lot of discretion.

19 MR. LEVINE: Exactly.

20 THE COURT: I understand that.

21 MR. LEVINE: The sentencing guidelines that the
22 government cites regarding in the case of a violation of
23 supervised release having to be consecutive, that is a
24 guideline, that is not by statute. Congress never set forth
25 that rule.

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1 THE COURT: OK. I understand that argument. I can
2 give defendant time served today, correct?

3 MR. LEVINE: You would have to give him a minimum of
4 five years, Judge. That is the statutory minimum.

5 THE COURT: All right. Give him five years then.

6 MR. LEVINE: That is what I am asking you to do.

7 THE COURT: Great. But I can give him anything that
8 doesn't violate the statute, right?

9 MR. LEVINE: Yes.

10 THE COURT: I understand that.

11 MR. LEVINE: Right.

12 THE COURT: That part I understand. Go ahead.

13 MR. LEVINE: What I am saying, Judge, is that in terms
14 of the equities of it, he was out of jail in Canada and he was
15 put in --

16 THE COURT: Under sentence. He may have been out of
17 jail. He was under sentence.

18 MR. LEVINE: Yes, Judge. There is no question --

19 THE COURT: He was serving his sentence, and you can't
20 have it both ways either. You can't say, oh, my goodness, he
21 was serving his sentence in Canada.

22 Was he serving his sentence while he was on parole?

23 MR. LEVINE: He was serving sentence while he was on
24 parole.

25 THE COURT: OK.

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1 MR. LEVINE: Yes, Judge. There is no question this
2 was a but-for cause of his re-incarceration there.

3 THE COURT: The point of that is what?

4 MR. LEVINE: The point is that, in that sense, the
5 parole violation was taken into account as punishment for this.
6 This, if he didn't have an indictment in the Southern District,
7 he wouldn't have been re-incarcerated. If it was a different
8 sort of violation, he might have been given 30 days on the
9 parole violation and by the parole department and released, as
10 they do here, sort of a rote and restore, 90 days --

11 THE COURT: Not that it is a dispositive factor here,
12 not that it is dispositive because it certainly isn't, but as I
13 heard you say, and I think you confirmed to me already, that of
14 the 117 months he served, when we take into account the time on
15 the revocation of parole in Canada, he served nearly all of
16 that 117 months, correct?

17 MR. LEVINE: If you take into account the good time
18 that would have come off the 117 months.

19 THE COURT: OK.

20 MR. LEVINE: He would have served a 117-month sentence
21 if he were here.

22 THE COURT: All right.

23 MR. LEVINE: Yes. So moving on then, Judge, I think
24 you get my point that you have discretion.

25 THE COURT: I have lots of discretion.

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1 MR. LEVINE: I'm asking you to exercise the discretion
2 and taking into account the equities and to give him some
3 credit for some, if not all, of the time that he had to serve
4 on the parole violation that resulted from the same conduct,
5 and that the government concedes resulted from the same conduct
6 in the plea agreement.

7 Also, Judge, Mr. Mawhinney was charged as a
8 codefendant of Mr. Cavan, and Mr. Mawhinney received a sentence
9 of 76 months, I believe. I know Mr. Mawhinney didn't have a
10 prior conviction and that makes him different than Mr. Cavan.
11 However, Mr. Mawhinney's role in this was at least equal to
12 what Mr. Cavan's was, despite what the government says. I have
13 a minimum of five transcripts where Mr. Mawhinney is
14 negotiating by himself on the phone with the confidential
15 source. Mr. Mawhinney made the trip to New York, not at
16 Mr. Cavan's direction. Mr. Cavan wasn't his boss.

17 Mr. Cavan wasn't allowed to come to New York. He
18 wouldn't have been allowed to cross the border because of his
19 prior conviction. Mr. Mawhinney could. Mr. Mawhinney, in
20 fact, showed up for meetings with the confidential source, and
21 he brought his boss with him. And that's clear from one of the
22 recordings, that there is somebody with him who is clearly his
23 boss and who explains about being there and having to be there
24 and is losing money simply by being there because of how much
25 drugs he sells and where he sells it. It is not Mr. Cavan.

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1 So Mr. Mawhinney either has a boss that is above
2 Mr. Cavan that he is dealing with directly, or Mr. Mawhinney is
3 actually negotiating other deals by himself that doesn't even
4 involve Mr. Cavan. But in any case, then Mr. Mawhinney is at
5 least as culpable and at least as equal as Mr. Cavan in this
6 conspiracy. He received a sentence of 76 months. I don't
7 think that the fact that Mr. Cavan has the prior conviction
8 should result in him getting ten more years than Mr. Mawhinney,
9 which is what would fall within the guideline range.

10 THE COURT: Well, let me ask you. Did Mr. Mawhinney
11 get a leadership role enhancement?

12 MR. LEVINE: He did not, but that is up to the
13 government to reach with him or not.

14 THE COURT: No, it's not. That is absolutely not
15 true, Mr. Levine. That is not true. It's not up to the
16 government to decide whether he gets a leadership enhancement.
17 Where did you get that from?

18 MR. LEVINE: Judge, they had a plea agreement and they
19 made their determination in there about what they agreed to,
20 and the government is the one that provides the facts in the
21 case to the probation department.

22 THE COURT: Yes.

23 MR. LEVINE: So it is based on that.

24 Ultimately, Judge, yes, it is your determination. It
25 is your determination based on what the government says and

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1 what the government sets forth in the plea agreement with the
2 defendant and what they tell probation.

3 THE COURT: No. What probation tells me, and there
4 have been times when the government has not sought an
5 enhancement which I thought was appropriate in a case, or has
6 not given a downward adjustment which I thought was appropriate
7 in the case. In fact, in some of those, they have been based
8 on the recommendation of the Office of Probation who has looked
9 at facts and said, That is not right, this enhancement should
10 be given or not.

11 But the point is, the government doesn't control.
12 What I have here is a guideline calculation that the parties to
13 the case before me have accepted and which has a leadership
14 role enhancement. To talk about another defendant's sentencing
15 and mention the difference in criminal history, but not mention
16 that one had a leadership role enhancement and the other
17 didn't, is not optimum.

18 Anyway, we have that straightened out now. Go ahead.

19 MR. LEVINE: My point is, Mr. Mawhinney should have
20 been receiving that based upon the information that I have, the
21 transcripts I have of Mr. Mawhinney's showing, Mr. Mawhinney's
22 role in everything, his participation in it. And what I see,
23 what I have been provided by the government, it seems to me
24 that Mr. Mawhinney should have been provided and should have
25 been given it.

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1 THE COURT: That he was a manager or supervisor of
2 five or more participants, or his role was otherwise extensive?

3 MR. LEVINE: Yes.

4 THE COURT: All right. Go ahead.

5 MR. LEVINE: Of course, 3553 requires that the point
6 is, you should be taking into account, of course, what other
7 codefendants got in the same conduct in the same.

8 THE COURT: I have an obligation to avoid unwarranted
9 sentencing disparities.

10 MR. LEVINE: Yes, which is why I am making my point
11 about Mr. Mawhinney.

12 THE COURT: I understand.

13 MR. LEVINE: Your Honor, those are my issues with the
14 government's sentencing memorandum.

15 Your Honor, certainly given that there was an offer
16 made in this case, Mr. Cavan was allowed to plead guilty to the
17 lesser count, the (b)(1)(B), reducing his minimum from ten to
18 five. Of course that gives your Honor tremendous discretion
19 along with it then to sentence him below the ten years, which
20 I think is really the basis for doing it.

21 It is not that the government couldn't prove the
22 (b)(1)(A). In fact, the guideline range takes into account the
23 (b)(1)(A), the (b)(1)(A) amount of drugs. The point was to
24 give your Honor that discretion. I am asking your Honor on
25 behalf of Mr. Cavan to exercise that discretion, to sentence

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1 Mr. Cavan to a period of five years, taking into account
2 everything in my sentencing memorandum and what I have said
3 today.

4 THE COURT: Thank you, Mr. Levine.

5 Mr. Cavan, this is your opportunity to address the
6 court directly, to bring to my attention any facts or
7 circumstances that you believe I should take account of in
8 passing sentence upon you. If there is anything you wish to
9 say, this is the time to say it.

10 THE DEFENDANT: I feel bad for what happened, what I
11 did wrong. It was a bad decision for me, and my family went
12 through a hard time with me all these years, past ten years.
13 And I am asking you for forgiveness, your Honor.

14 THE COURT: Thank you, Mr. Cavan.

15 This is the government's opportunity to speak.

16 MR. IMPERATORE: Your Honor, it's very difficult to
17 imagine a more compelling case for specific deterrence than
18 this case. This is a defendant who knew exactly what happens
19 in U.S. courts, which he is caught in possession or attempting
20 to distribute huge quantities of drugs in the United States.
21 He got a substantial sentence in Minnesota. Through that
22 process, he undoubtedly learned how mandatory minimums work,
23 how the sentencing guidelines work, and exactly what would
24 happen if he were caught again trying to distribute drugs
25 through or from the United States.

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1 When he was transferred to Canada, he received this
2 huge windfall that is not available under U.S. law, this early
3 release on parole after serving only a small portion of his
4 sentence. And what is the first thing he did when he got out
5 on parole? He tries to set up this drug deal. And not only
6 that, his connection for the drug deal is the brother of an
7 individual he was incarcerated with in Minnesota.

8 In so doing, he showed tremendous disrespect for the
9 U.S. court system, for the law of this country. And the Court
10 should bear in mind here, your Honor, there are two separate
11 drug deals at issue. The first is this drug deal --

12 THE COURT: I understand. This is before Hicks was
13 caught at the border and after Hicks was caught at the border.

14 MR. IMPERATORE: Right. The point, your Honor, even
15 after Hicks was caught at the border, he didn't stop. He kept
16 trying to negotiate another drug deal that he carried out
17 through Mawhinney. So even the fact that he was on parole and
18 had been stopped the first time around didn't deter him from
19 engaging in yet another multi-kilo load of cocaine.

20 All of that shows, your Honor, that probation has it
21 right in their sentencing recommendation when they say this is
22 a defendant who is unable to live in a community-based setting
23 without breaking the law. They point out correctly that this
24 is someone who spent essentially his entire adult life breaking
25 the law. Even though he was arrested in Minnesota in 2006, he

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1 hadn't even been employed for the previous nine years, which
2 suggests that he may have been earning his living by engaging
3 in criminal conduct.

4 There is a truly compelling need for this court to
5 sentence him to a guidelines term in order to deter him and
6 other individuals who try to exploit the drug trade in the
7 United States for their personal gain. It is an aggravating
8 factor that he tried to do that from Canada while outside the
9 jurisdiction of the United States.

10 Mr. Levine's argument boils down to a claim that the
11 court should somehow discount the time he served in Canada on
12 the parole violation when imposing the sentence in this case.
13 I don't really understand the argument. The defense seems to
14 want to have it both ways. They concede that when Mr. Cavan
15 went in in Canada, he was going back in on the original
16 sentence. That is true. In fact, while he came close to
17 satisfying the original Minnesota term of imprisonment, he
18 didn't actually complete it. As pointed out on page 18 of the
19 presentence report, through July 2015, he served 90 months of
20 that 117-month sentence. So even with good time credit, he
21 would have served approximately 110 months. That is still
22 seven months short of the total Minnesota term.

23 The result that the defendant wants here is contrary
24 to common sense and the guidelines, as the court highlighted in
25 its questions. Under the guidelines, when someone goes back in

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1 for a violation of supervised release, that time is supposed to
2 run consecutively under the guidelines. That is Section 71.3.

3 Finally, your Honor, this argument about comparing the
4 defendant to John Mawhinney is really frivolous. For one
5 thing, John Mawhinney was not involved in the first cocaine
6 deal at all with Hicks being stopped at the border. Both of
7 these transactions were set up by Cavan. Cavan was the one
8 negotiating from Canada. That shows his leadership role.

9 Mawhinney, by contrast, was caught and arrested in a
10 hand-to-hand drug transaction in New York. So the fact that
11 Cavan is in Canada on the phone negotiating, and here is this
12 defendant, Mawhinney, being arrested doing a hand-to-hand shows
13 that Cavan is clearly in a leadership role with respect to
14 Mawhinney. A leader like Cavan doesn't get caught in a
15 hand-to-hand drug transaction.

16 For all those reasons, your Honor, we submit that a
17 guideline sentence is necessary, and we urge the court to
18 impose one, to send a message that when you are caught as a
19 repeat offender, particularly someone in a leadership role,
20 there is going to be a price to pay at sentencing.

21 THE COURT: This is the court's statement of reasons
22 for the sentence to be imposed on Han Cavan.

23 In sentencing Mr. Cavan, I have considered all of the
24 materials that I referenced at the outset. I have considered
25 the thoughtful and lively interchange with Mr. Levine, which

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1 was most appropriate, and he lived up to his obligations as an
2 effective and zealous advocate; I have considered the very
3 brief statement of Mr. Cavan, which I found to be sincere; and
4 I have considered the helpful statements of Mr. Imperatore. I
5 have considered all of the factors under 3553(a). I need not
6 recount all that I have considered, but I have considered it
7 all.

8 In terms of the nature and characteristics of the
9 offense, the defendant entered a plea of guilty of
10 participating in a conspiracy to distribute five kilograms and
11 more of cocaine. With regard to the offense conduct, there is
12 no dispute here that the amount of cocaine to be distributed in
13 this conspiracy, had it been successful, was between 15 and
14 50 kilograms of cocaine. There is also no dispute and an
15 agreement that the defendant was a manager or supervisor and
16 the criminal activities involved five or more participants or
17 was otherwise extensive.

18 The history related to Mr. Cavan's prior criminal
19 conviction is relevant because of the timeline. He was
20 sentenced on November 20, 2006, to 117 months' imprisonment,
21 three years' supervised release, in an MDA possession with
22 intent to distribute case. And the defendant admitted to his
23 involvement and stated that he had agreed to transport ecstasy
24 pills from Canada to the United States, and was held
25 responsible for 29,807 pills.

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1 Pursuant to a treaty on the International Transfer of
2 Offenders Act, he was transported to a Canadian prison to serve
3 most of his sentence. He was transferred June 26, 2008. It
4 was then that he began to negotiate the purchase of kilogram
5 quantities of cocaine and sent a person to New York City to
6 meet with a confidential source.

7 A month later, his associate, Jo Van Lo, met with the
8 confidential source and they discussed a transaction involving
9 approximately 17 kilograms of cocaine, and Cavan indicated that
10 he wanted Lo to inspect the drugs and to confirm their quality,
11 and that a driver would be transporting money from Canada to
12 New York, leaving the next day. And the confidential source
13 was advised that the money would be in a hidden compartment in
14 a block Honda compartment with Ontario license plates.

15 Lo met with the source in New York and provided a key
16 to the pilot with instructions on how to retrieve the money.
17 The money was intercepted at the Canadian border. The car was
18 searched and approximately \$458,000 was found in a hidden
19 compartment in the automobile.

20 One might think that this might put an end to matters,
21 but it didn't. Lo met with the confidential source and told
22 him about the interception of the money and assured that the
23 drug trafficking would continue later. And there was a
24 discussion that in October 2009, in which Cavan advised the
25 confidential source that he was interested in buying ten kilos

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1 of cocaine, and that Cavan would pay 24,000 per kilogram and
2 that two of his sources would be coming to meet with the
3 confidential source. Codefendant Mawhinney was arrested in
4 connection with that transaction. Cavan, Mawhinney, Hicks, the
5 person with the car seized at the border, and Adam Kaup, were
6 all indicted by an indictment returned by the grand jury in
7 this district.

8 Like many defendants who appear in this court,
9 Mr. Cavan did not have an easy life. He is one of seven
10 children and his family is spread out, at least one member
11 living in France and another in Lagos. Some he is in contact
12 with, some he's not. He left Lagos at age six and went to
13 Thailand, and ultimately his family settled in Ontario,
14 supported by a church group. He moved from Owen Sound to the
15 larger town of Kitchener in 1999.

16 He has had a history of use of controlled
17 substances -- methamphetamine, powdered cocaine, marijuana --
18 and as noted, he has a sparse employment record since 2003. I
19 have considered the need to impose just punishment. Where the
20 cocaine was bound for is not particularly significant. It
21 destroys lives, and there was utter indifference on the part of
22 Mr. Cavan and others working with him as to where that cocaine
23 wound up and how lives would be affected by its use.

24 International drug trafficking is difficult to detect
25 and there is need to deter others from engaging in that sort of

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1 conduct. Mr. Cavan was caught in connection with the District
2 of Minnesota case. He understood what the penalties were under
3 U.S. law for drug trafficking. He was shown generosity and
4 kindness with the willingness of U.S. authorities to transfer
5 him pursuant to treaty and statute to serve his time in Canada.
6 The Canadian authorities were similarly generous in letting him
7 out on day parole in Kitchener. We know how he responded to
8 that. We know the respect that he showed for law. We know how
9 he was deterred by the sentence he received in a federal court.

10 There is a need to protect the public from further
11 crimes of this defendant. Also a need to avoid unwarranted
12 sentence disparities among persons convicted of similar crimes.
13 The punishment that Mr. Cavan received for his District of
14 Minnesota case is separate from and will run consecutive to the
15 sentence in this case. He owes apparently more time on that
16 sentence.

17 The court will recommend to the Bureau of Prisons and
18 the Department of Justice that he not be transferred to Canada
19 pursuant to treaty or statute, and that he serve out his prison
20 term in a U.S. facility. I would never dream of making that
21 sort of a recommendation but for what happened here in this
22 case when he was transferred.

23 I have considered the sentencing guidelines, policy
24 statements, and official commentary of the United States
25 Sentencing Commission. I have considered them in an advisory

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1 manner and recognize that I am not obligated to sentence within
2 the guidelines. I recognize that I have variance discretion.
3 I also recognize that the defendant is 48 years of age.

4 Based upon all the surrounding circumstances, I intend
5 to sentence the defendant to 120 months' imprisonment, five
6 years' supervised release, waive the fine based on limited
7 assets and limited earnings ability, impose forfeiture, and
8 impose a mandatory special assessment of \$100. The following
9 is sufficient but not greater than necessary to achieve the
10 purposes of Section 3553(a) in my view.

11 Does the defendant or his counsel have any objection
12 to the court's proposed sentence or the statement of reasons
13 for that sentence?

14 MR. LEVINE: One issue is I don't think he owes any
15 time on the previous sentence anymore.

16 THE COURT: That may be the case, but that is a matter
17 for the Bureau of Prisons too. But the point that I make here
18 is, and the judgment will recite, that it is consecutive to any
19 time that he may owe on that judgment. He may owe no time on
20 that judgment, but that is a matter for the Bureau of Prisons
21 to calculate.

22 MR. LEVINE: Can I have just one second?

23 (Pause)

24 Judge, the only objections I have are in the nature of
25 the arguments that I made before. You heard the argument. No

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1 legal objections to it. Mr. Cavan has asked if it would be
2 possible for you to recommend that BOP place him in Georgia, if
3 possible.

4 THE COURT: Reason?

5 THE DEFENDANT: I get better weather.

6 THE COURT: I am going to leave that to the Bureau of
7 Prisons.

8 Let me hear from the government. Any objection to the
9 court's proposed sentence or statement of reasons for that
10 sentence?

11 MR. IMPERATORE: No objection.

12 THE COURT: The defendant will please stand and I'll
13 impose sentence.

14 Han Cavan, it is the judgment of this court that
15 you're hereby remanded to the custody of the United States
16 Bureau of Prisons to be imprisoned for 120 months, consecutive
17 to any discharge portion of the sentence imposed by the
18 District of Minnesota in 06 CR 92. It is recommended to the
19 Bureau of Prisons and the Department of Justice that you not be
20 considered eligible for transfer to serve any portion of this
21 sentence outside the United States.

22 Following release from imprisonment, you shall be
23 placed on supervised release for five years with the following
24 terms and conditions: You shall not commit another federal,
25 state or local crime, nor illegally possess a controlled

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1 substance, nor possess a firearm or destructive device. You
2 shall cooperate in the collection of DNA as directed by
3 probation. The mandatory drug-testing condition is suspended
4 due to imposition of a special condition requiring drug
5 treatment and testing.

6 The standard conditions of supervision 1 through 13
7 are imposed with the following special conditions: You shall
8 submit your person, residence, place of business, vehicle, and
9 any other property or electronic devices under your control to
10 a search on the basis that the probation officer has reasonable
11 suspicion that contraband or evidence of a violation of the
12 conditions of release may be found. The search must be
13 conducted at a reasonable time and in a reasonable manner.
14 Failure to submit to a search may be grounds for revocation.
15 You shall inform other residents that the premises may be
16 subject to search pursuant to this condition. You shall
17 participate in an outpatient treatment program approved by
18 probation, which program may include testing to determine
19 whether you have reverted to using drugs or alcohol. You shall
20 contribute to the cost of services based on an ability to pay
21 and the availability of third-party payments. The court
22 authorizes the release of available drug treatment evaluations
23 and reports to the substance abuse treatment provider.

24 You shall obey the immigration laws of the United
25 States and comply with the directives of immigration

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1 authorities. You shall report to the nearest probation office
2 within 72 hours of release from custody. It is further ordered
3 that you shall pay the United States a special assessment of
4 \$100, which shall be due immediately.

5 You shall forfeit all right, title, and interest to
6 all real and personal property which was used in connection
7 with the crime or was the proceeds of the crime or derived from
8 the crime.

9 Mr. Cavan, you have the right to appeal the sentence I
10 have imposed. If you cannot afford the cost of an appeal, you
11 may apply for leave to appeal as a poor person. The time
12 limits for filing the notice of appeal are brief and they are
13 strictly enforced. If you request, the Clerk of Court will
14 prepare and file a notice of appeal on your behalf immediately.

15 Do you understand all that?

16 THE DEFENDANT: Yes.

17 THE COURT: Please be seated.

18 Anything further from the government?

19 MR. IMPERATORE: No, your Honor.

20 THE COURT: Anything further from the defendant?

21 MR. LEVINE: No, your Honor.

22 THE COURT: Mr. Cavan, it would be my hope that I
23 could leave you with something of an optimistic or hopeful
24 message. It is awfully tough to do. You are going to have to
25 figure out how to have meaning to the time that you spend

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1 either in learning skills that you can apply when you return
2 home or making amends to people in your family and friends who
3 have been hurt by all of this. I certainly wish you and your
4 family the very best.

5 We are adjourned.

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